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In re Application of	:	DECISION ON
BROWN et al.	:	
Application No.: 10/031,003	:	PETITION UNDER
PCT No.: PCT/GB00/01652	:	
Int. Filing Date: 28 April 2000	:	37 CFR 1.181 OR in the alternative,
Priority Date: 30 April 1999	:	
For: FIRE RETARDANT COMPOSITIONS	:	PETITION UNDER 37 CFR 1.137(b)

This is a decision on applicants' "Petition to Withdraw Holding of Abandonment or, in the Alternative, Petition for Revival", filed with the United States Patent and Trademark Office (USPTO) on 28 November 2003. Applicants request that the application's abandoned status be withdrawn on the grounds that they did not receive the Office action mailed on 19 June 2002. The petition is being treated as a petition under 37 CFR 1.181.

BACKGROUND

On 15 March 2002, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicants indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) and the \$130 surcharge for filing the oath or declaration after the thirty month period was required. On 29 March 2002, applicants filed a response to the Notification of Missing Requirements, including the petition under 1.182 to change the name of inventor Marie-Laure David.

On 19 June 2002, a decision was mailed to applicant, granting the petition and notifying applicant that the declaration was unacceptable as filed because it contained two identical sheets of page 3 and two identical sheets of page 4. Each page was signed by different inventors and thus, the declaration was not properly executed. It appeared that the attorney pieced together two separate complete declarations into one composite declaration or that the inventors were presented with an incomplete declaration. Applicant was advised that what was required was one declaration where all inventors have signed or two separate complete declarations. Applicants were given two months from the mail date of the decision to respond, or by 19 August 2002.

On 26 September 2003, a Notification of Abandonment was mailed to applicant, indicating that applicant had failed to respond to the Decision dated 19 June 2002.

On 28 November 2003, applicant filed a petition requesting that the abandonment of application be withdrawn on the basis that the 19 June 2002 decision was never received or in the alternative, requesting that the application be revived under the provisions of 37 CFR 1.137(b).

DISCUSSION

To withdraw the holding of abandonment, a proper showing is necessary in order to establish that papers were not received. As set forth in the Official Gazette at 1156 OG 53, the

proper showing must include the following: (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received (the docket records must also be referenced in practitioner's statement).

Items (1) and (2) are satisfied by the practitioner's statement that the Office action was not received by the practitioner and his statement attesting that a search of the file jacket and docket records indicated that the Office action was not received.

With regard to Item (3), the docket record required is the record showing all responses docketed for the date a response was due (19 August 2002 in this case) indicating that there was no record of a response for the present application being due on that date. This docket record was attached to and referenced in practitioner's statement and indicates that the decision in this application was not received.

In addition, a statement from Matthew Leddy, the law firm's docketing clerk, indicates that docket record for 19 August 2002, where the non-received Office action would have been entered had it been received, does not contain an entry for a response to the Office action due on 19 August 2002 for this application. In further support of his petition, applicant submitted the docket record for this application and the statement of Wendell Dunn, who is in charge of the law firm's docketing department, attesting to the non-receipt of the 19 June 2002 Office action. Thus, applicant has provided the proper showing necessary to withdraw the holding of abandonment and the petition may be properly granted at this time.

Furthermore, on 28 November 2003, along with his petitions under 37 CFR 1.181 and 37 CFR 1.137(b), applicant filed three declarations executed by the inventors. This is considered a response to the Notification of Missing Requirements. It is noted that the \$130 surcharge for filing the declaration after the thirty month period was paid on 29 March 2002.

Applicant's alternative Petition for Revival under 37 CFR 1.137(b) is considered moot.

CONCLUSION

For the reasons presented above, the Petition under 37 CFR 1.181 is **GRANTED**. The Petition for Revival under 37 CFR 1.137(b) is **MOOT**.

The 26 September 2003 Notification of Abandonment (Form PCT/DO/EO/909) is hereby **VACATED**.

The application will be forwarded to the United States Designated/Elected Office for further processing. The 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) date is **28 November 2003**.



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